Office - Supreme Court, U.S.
FILED
FEB 16 1982
ALEXANDER L. STEVAS,
CLERK

~~81-1537~~
No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

EDWARD J. HICKEY, JR.
Cross-Petitioner,

v.

THE DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,
Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MICHAEL F. HEALY
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-3942
Attorney for Cross-Petitioner
Edward J. Hickey, Jr.

OF COUNSEL:
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000

DI CESARE - Printing — 331-6101 — Washington, D.C. 20006

QUESTIONS PRESENTED

1. Are the bar admission criteria established by the District of Columbia Court of Appeals exempt from scrutiny under the federal antitrust laws where the Court is not a sovereign but a subordinate governmental body created by act of Congress and no clearly articulated and affirmatively expressed Congressional policy exists regarding the standards for admission to the District of Columbia bar?

2. Even if the D.C. Court of Appeals is an agent of the sovereign, is there any basis for concluding that the Court's actions relating to bar admission are immune from scrutiny under the antitrust laws where the Court has abdicated to the American Bar Association, a private entity, its authority to establish eligibility criteria for bar admission?

PARTIES TO THE PROCEEDING SOUGHT TO BE REVIEWED

This cross-petition seeks review of a decision of the U.S. Court of Appeals for the D.C. Circuit in the case of *Hickey v. District of Columbia Court of Appeals* [D.C. Cir. No. 79-1233]. The parties to that appeal also included the Honorable Theodore R. Newman, Jr., Chief Judge, District of Columbia Court of Appeals, and Catherine B. Kelly, John W. Kern, III, George R. Gallagher, Frank Q. Nebeker, Walter Yeagley, Stanley S. Harris, Julia C. Mack, and John M. Ferren, Judges of the District of Columbia Court of Appeals.

The petition which this cross-petition accompanies also seeks review of *Feldman v. Gardner,* [D.C. Cir. No. 78-2235], which the court below treated as a companion case to *Hickey v. District of Columbia Court of Appeals,* but did not consolidate with that case. The parties in *Feldman* who are not also parties in *Hickey* are the plaintiff Marc Feldman and defendants Committee on Admissions, District of Columbia Court of Appeals, and William C. Gardner and Anthony Nigro, the Chairman and Secretary respectively of the Committee on Admissions.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
STATEMENT OF JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	4

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

EDWARD J. HICKEY, JR.
Cross-Petitioner,

v.

THE DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,
Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Edward J. Hickey, Jr., respondent in No. 81-1335, respectfully cross-petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit. The other respondent in No. 81-1335, Marc Feldman, is also filing a cross-petition. For the sake of avoiding duplication and for the convenience of the Court, portions of Mr. Feldman's cross-petition, where applicable, will be incorporated herein.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals of which review is sought is reproduced in the Appendix to the Petition for Certiorari filed on behalf of the District of Columbia Court of Appeals ("Pet. App.") at 1a-60a. The two decisions of the district court that were reviewed by the U.S. Court of Appeals appear at Pet. App. 61a-73a.

STATEMENT OF JURISDICTION

The panel of the U.S. Court of Appeals for the District of Columbia Circuit filed its Opinion in this case on July 23, 1981. The U.S. Court of Appeals denied the petitions for reconsideration and suggestions for rehearing *en banc* on October 27, 1981.

Counsel for Edward J. Hickey, Jr. received the petition for certiorari filed in this case on January 15, 1982. In accordance with Rule 19.5 of the Rules of the Supreme Court, this cross-petition is filed not more than 30 days after receipt of the petition for certiorari. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1254(1) and 2101(c) (1976).

STATUTES INVOLVED

The principal statute involved in this case is D.C. Code § 11-2501, a provision of the Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473 *et seq.* (1970). It states as follows:

> "The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion." D.C. Code Ann. §11-2501(a) (1981).

The case also involves Rules 46 I(b)(3) and (b)(4) of the General Rules of the D.C. Court of Appeals, which provide:

> "(3) Proof of Legal Education
>
> An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association or who shall be eligible to be graduated from an approved law school within 60 days of the date of the examination will be permitted to take the bar examination. Under no circumstances shall an applicant be admitted to the bar without having first submitted to the Secretary to the Committee a certificate verifying that he has graduated from an approved law school.
>
> (4) Law Study in a Law School NOT approved by the ABA.
>
> An applicant who graduated from a law school not approved by the American Bar Association may be permitted admission to an examination only after receiving credit for 24 semester hours of study in a law school that at the time of study was approved by the American Bar Association and with Committee approval."

STATEMENT OF THE CASE

For his Statement of the Case, Cross-Petitioner Hickey adopts the description of the United States Court of Appeals for the District of Columbia Circuit at pages 5-8 of its opinion, set forth in the Appendix to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia at 5a-8a.

REASONS FOR GRANTING THE WRIT

Cross-Petitioner Marc Feldman is also filing a cross-petition which will set forth those arguments that Cross-Petitioner Hickey would make herein. For the convenience of the Court and in order to avoid duplication, Cross-Petitioner Hickey hereby adopts the Reasons for Granting the Writ submitted by Cross-Petitioner Feldman.

CONCLUSION

For the foregoing reasons, the Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia should be granted.

Respectfully submitted,

MICHAEL F. HEALY
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-3942

Attorney for Cross-Petitioner
Edward J. Hickey, Jr.

OF COUNSEL:

Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000